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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,431	08/10/2001	Alberto Gonzalo Perez Roldan	P56378	4119
7590 05/04/2004				
Robert E. Bushnell Suite 300 1522 K Street, N.W. Washington, DC 20005-1202				
EXAMINER TOOMER, CEPHIA D				
ART UNIT		PAPER NUMBER		
1714				

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/925,431	PEREZ ROLDAN, ALBERTO GONZALO	
	Examiner	Art Unit	
	Cephia D. Toomer	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 15, 16, 21-39 and 50-56 is/are pending in the application.
- 4a) Of the above claim(s) 41-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8, 9, 15, 16, 21-39 and 50-55 is/are rejected.
- 7) ☒ Claim(s) 2, 7 and 56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the amendment filed February 10, 2004 in which claims 1, 4, 6, 15, 21, 27, 31, 50 and 54 were amended. The substitute specification has been entered. It should be noted that in claims 28 and 29 "froth" should read – forth --.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 54 contains the trademark/trade name KRATON G 1652. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a triblock polymer and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

2. Claims 1, 3, 5-6, 8, 15, 16, 21, 23-27, 30-31, 33-37, 50-53 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camp (US 5,964,905) in

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combination with Petro-Canada Tech Data Sheets for PURITY Grade 50 and LUMINOL T 500 white mineral oil for the reasons of record.

3. Claims 22 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camp (US 5,964,905) in combination with Petro-Canada Tech Data Sheets for PURITY Grade 50 and LUMINOL T 500 white mineral oil, as applied to the claims above, further in view of Tsaras (US 3,844,706) for the reasons of record.

4. Claims 28-29 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camp (US 5,964,905) in combination with Petro-Canada Tech Data Sheets for PURITY Grade 50 and LUMINOL T 500 white mineral oil, as applied to the claims above, further in view of Morrison (US 5,879,694 and 6,066,329) for the reasons of record.

5. Claims 4, 9 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camp (US 5,964,905) in combination with Petro-Canada Tech Data Sheets for PURITY Grade 50 and LUMINOL T 500 white mineral oil, as applied to the claims above, further in view of C.M. Roland KRATON G 1600 SEBS for the reasons of record. Claim 9 was inadvertently omitted in the prior office action.

6. Applicant's arguments have been fully considered but they are not persuasive.

7. Applicant argues that Camp does not anticipate the claims. The examiner agrees and therefore the rejection of the claims under 35 USC 102(b) is withdrawn. However, the rejection of the claims under 35 103(a) is maintained.

Applicant argues that the examiner's example of JELLO is not proper for showing the freestanding composition or candle defined in the present application.

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Camp teaches that varying the amount ratio and types of triblock copolymers controls the gel consistency of the composition. Camp states that the higher the amount of copolymer, the stiffer the gel. Since Camp teaches the same components in ranges that overlap those of the present invention, it would be reasonable to expect that the gel composition would be free standing. The examiner disagrees with Applicant's argument that the reason Camp prepares his candle composition in a container is because it is a molten candle gel. Camp merely states that at 490 °F-510 °F the surface of the candle is molten and supports a flame.

Applicant argues that the oils of Camp and the product sheets do not possess a density at 20 °C of not less than 0.88 kg/L. The ranges taught by PURITY 50 and LUMINOL are close enough to the density of the present invention that the skilled artisan would reasonably expect the oils of the prior art and those of the present invention to have similar properties.

Applicant argues that unexpected results are obtained upon practicing the present invention.

Applicant's data have been considered but are not deemed to constitute unexpected results. Applicant's showings are not commensurate in scope with the claims. The claims are directed to generic copolymers and the showings are directed to generic KRATON G series triblock copolymers. The examiner cannot ascertain if unexpected results are obtained.

Camp clearly recognizes that the candles of his invention may be freestanding because the upper limits of the amount of polymers that are present indicate this. While

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Camp does teach the higher the amount of copolymer, the stiffer the gel, this teaching in no way suggests that the candle is only freestanding at room temperature. If this were case, Applicant's candle would also have a flowability problem once the heat of the wick's combustion contacts the composition. Applicant has not shown or drafted claims that rebut the prima facie case of obviousness.

Applicant argues that claim 54 teaches the preferred embodiment and that it is proper to recite a trademark in a claim.

Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name.

Applicant argues that Camp teaches KRATON G 1650 which may cause flash over problems.

Camp does exemplify 1650; however, he is not limited to 1650 because he specifically teaches that any KRATON G series polymer may be used in his invention.

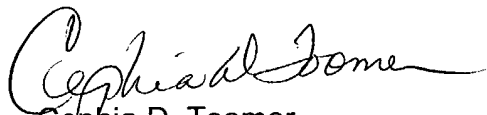
8. Claims 2, 7 and 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cephia D. Toomer
Primary Examiner
Art Unit 1714

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